

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2727 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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FIROJKHAN AKTHARALIKHAN BABI

Versus

STATE OF GUJARAT

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Appearance:

MR SUDHANSHU S PATEL for Petitioner

MR SP HASURKAR with MR SA PANDYA, for Respondent No. 1

MR ANANT S DAVE for Respondent No. 2

MR RJ OZA for Respondent No. 3

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/11/98

ORAL JUDGEMENT

Rule. Mr.S.A. Pandya, ld. AGP, Mr.Anant S. Dave, and Mr.R.J. Oza waive service of rule on behalf of respondents nos.1, 2 and 3 respectively. On request of both the sides, the matter is taken up for final hearing.

2. The petitioner has come with the grievance that the promotion to the post of Deputy Collector from amongst the Mamlatdars has been denied to him and he has been superseded by his 12 juniors. He submits that his name was at Sr.No.603 in the existing seniority list of Mamlatdars and the candidates even junior to him at Sr.No.627 was promoted. Mr. Dave has pointed out that the promotions to the post of Deputy Collector were made on the basis of 'merit-cum-efficiency' on the basis of selection. It has also been submitted that his case was considered by the Departmental Promotion Committee at the time when the orders with regard to the promotion of his juniors were passed on 3rd January 1998, vide Annexure.C to the petition. During the pendency of this Special Civil Application, the adverse remarks which were recorded against the petitioner for the period from 19th August 1994 to 31st March 1995 have been expunged on the basis of the representation made by him and in support of this submission, Mr.Patel has also placed on record a xerox copy of the Revenue Department's memo dated 3rd September 1998.

3. In view of the fact that the adverse remarks have been expunged in terms of the Memo dated 3rd September 1998 which is not disputed before this Court by the respondents, the petitioner can at best be held entitled for re-consideration of his candidature for the purpose of promotion to the post of Deputy Collector by the Departmental Promotion Committee on the recommendations of which the persons junior to the petitioner were appointed on 3rd January 1998. No other point has been pressed and in the facts and circumstances of this case, it is found that the petitioner is entitled to get his case re-considered as if the adverse remarks for the period from 19th August 1994 to 31st March 1995 were not in existence. Respondents are, therefore, directed to re-consider the petitioner's candidature for promotion to the post of Deputy Collector in accordance with the rules as if the adverse remarks as expunged were not in existence at the time when his case was considered by the Departmental Promotion Committee. In case, as a result of re-consideration, the petitioner is found to be suitable for promotion in accordance with law and relevant rules, appropriate orders shall be issued and in that case, the petitioner shall also be treated to have been promoted as Deputy Collector from 3rd January 1998 with all consequential benefits as if he had been promoted on 3rd January 1998. This exercise of re-consideration shall be taken up and resultant orders shall be passed as early as possible but in no case later than three months from today. This Special Civil

Application is, therefore, allowed in terms as aforesaid.  
Rule is made absolute. No order as to costs.

Direct service is permitted

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